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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,378	03/20/2001	Frank G. Logan III	65, 096-086	3007

7590 06/17/2004

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EXAMINER

NGUYEN BA, HOANG VU A

ART UNIT	PAPER NUMBER
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2122

3

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/812,378

Applicant(s)

LOGAN ET AL.

Examiner

Hoang-Vu A Nguyen-Ba

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This action is responsive to preliminary amendment submitted concurrently with application filed March 20, 2001, which is a continuation of application no. 09/024,773 filed February 17, 1998 which has matured into U.S. Patent No. 6,243,857.
2. Per Applicants' request claims 1-17 have been canceled and claims 17-39 have been added. Claims 17-39 have been examined.

#### *Priority*

3. Applicants have not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification (37 CFR 1.78).

#### *Drawings*

4. This application, filed under 37 CFR 1.60, lacks formal drawings. The informal drawings filed in this application are acceptable for examination purposes. When the application is allowed, applicant will be required to submit new formal drawings. In unusual circumstances, the formal drawings from the abandoned parent application may be transferred by the grant of a petition under 37 CFR 1.182.

### *Claim Objections*

5. Claim 31 is objected to because of the following informality: the comma “,” at the end of line 5 (i.e., after “the flowchart; and”) should be deleted.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

6. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 32-36 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 32-36 recite the limitation “the at least one other block” at line 1. There is insufficient antecedent basis for this limitation in the claim.

### *Double Patenting*

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Long*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1993); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Voge*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminated disclaimer in compliance with 37 CFR 1.103(c) 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 17-39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,243,857. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-17 of '857 patent anticipate claims 17-39. See the following table which shows the features of the independent claim 1 of '857 Patent and those of independent claim 17 of the instant application. As shown, instant claim 17 recite an obvious variation of the invention claimed in the claim 1 of '857 patent.

'857 Patent (claim 1)	Instant Application (claim 17)
<b>A machine programming and control system</b> including means for editing and generating a continuous multi-block flowchart representing a program for controlling the operations of <b>a machine</b> , means for displaying the flowchart, continuous and contiguous portions of the flowchart	<b>A machine programming and control system</b> comprising:

containing more than one flowchart block being displayed, means for directly compiling the program from the flowchart, and means for executing the compiled program represented by the flowchart such that the machine is controlled in accordance with a displayed flowchart, comprising:	
<b>a computer for editing, debugging, and generating a continuous multi-block flowchart representing a program and for controlling the operations of a machine connected to said computer in accordance with said flowchart;</b>	<b>a computer</b> based controller coupled to said machine and being adapted to edit, debug, and generate a continuous multi-block flowchart representing a program and to control the operations of the machine in accordance with said flowchart;
<b>a display connected to said computer for editing and generating</b> and including a divided into a plurality of columns each having a width and a plurality of rows each having a height, the display for displaying <b>the flowchart with a plurality of blocks</b> , each of said	<b>a display connected to said computer</b> based controller and being adapted to aid in <b>editing and generating the flowchart</b> , the display being adapted to a <b>plurality of blocks</b> associated with the flowchart

plurality of blocks being disposed within a cell defined by said columns and rows;	
said computer automatically displaying a <b>first</b> of said <b>blocks in a first color</b> and to display <b>all of remaining ones of said blocks in a second color.</b>	wherein a <b>first set of blocks is displayed in a first color and at least one other block is displayed in a second color.</b>

For the same rationale discussed above, instant claim 31 appear to recite an obvious variation of the invention claimed in claim 17 of '857 Patent.

<b>'857 Patent (dependent claim)</b>	<b>Instant Application (dependent claim)</b>
8	27
9	28
10	29
11, 13	30

For the same rationale discussed above, instant dependent claims 27-30 appear to recite an obvious variation of the invention claimed in dependent claims 8-11 and 13 of '857 Patent.

***Claim Rejections – 35 U.S.C. § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 17-39 are rejected under 35 U.S.C. § 102(b) as being anticipated by Applicant admitted prior art ("AAPA"), Figures 1, 2A, 2B, 3, 4A, 4B).

### Claims 17 and 31

AAPA discloses at least :

*a machine (see at least Figure 1 – Prior Art – items 12, 14, 16);*

*a computer based controller coupled to said machine and being adapted to edit, debug, and generate a continuous multi-block flowchart representing a program and to control the operations of the machine in accordance with said flowchart (see at least Figure 1 – Prior Art – item 10); and*

*a display connected to said computer based controller and being adapted to aid in editing and generating the flowchart, the display being adapted to a plurality of blocks associated with the flowchart, wherein a first set of the block is displayed in a first color and at least one other block is displayed in a second color (see at least Figure 1 – Prior Art – item 24; Figures 2A, 2B – Prior Art –; Figure 3 – Prior Art – item 24).*

### Claims 18 and 32

The rejection of base claims 17 and 31 is incorporated. AAPA further discloses *wherein the at least one other block corresponds to an active block during a runtime execution (see at least Figure 3 – Prior Art – item 80).*



**Claims 19 and 33**

The rejection of base claims 17, 31 and intervening claims 18, 32 respectively is incorporated. AAPA further discloses *wherein the at least one other block includes blocks associated with the active block* (see at least Figure 3 – Prior Art – item 80).

**Claims 20 and 34**

The rejection of base claims 17 and 31 is incorporated. AAPA further discloses *wherein the at least one other block corresponds to an active block during a debugging process* (see at least Figure 3 – Prior Art).

**Claims 21 and 35**

The rejection of base claims 17, 31 and intervening claims 20, 34 respectively is incorporated. AAPA further discloses *wherein the at least one other block includes blocks associated with the active block* (see at least Figure 3 – Prior Art).

**Claims 22 and 36**

The rejection of base claims 17 and 31 is incorporated. AAPA further discloses *wherein the at least one other block corresponds to blocks that have been modified during an editing process* (see at least Figure 3 – Prior Art).

**Claims 23 and 37**

The rejection of base claims 17, 31 and intervening claims 18, 32 respectively is incorporated. AAPA further discloses *wherein a third set of blocks are displayed in a third color* (see at least Figures 2A, 2B and 3 – Prior Art).

### **Claims 24 and 38**

The rejection of base claims 17, 31; intervening claims 18, 23; and 32, 37, respectively is incorporated. AAPA further discloses *wherein the third set of blocks are dependent upon the active block* (see at least Figures 2A, 2B and 3 – Prior Art).

### **Claims 25 and 39**

The rejection of base claims 17, 31; intervening claims 18, 23; and 32, 37, respectively is incorporated. AAPA further discloses *wherein the third set of blocks are dependent upon the active block* ((see at least Figures 2A, 2B and 3 – Prior Art).

### **Conclusion**

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Antony Nguyen-Ba, whose telephone number is (703) 305-0103. The examiner can normally be reached on Tuesday - Friday from 6:15 – 3:45 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam, can be reached at (703) 305-4552.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

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Central Fax Number

(703) 872-9306

A handwritten signature in black ink, reading "Anthony Nguyen-Ba". The signature is written in a cursive, flowing style.

**ANTHONY NGUYEN-BA**  
**PRIMARY EXAMINER**

Art Unit 2122

June 11, 2004